IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Rev.No.493 of 1993
Date of decision : 25.7.2007

Gorkha & another

....Petitioners

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

...

Present : Mr. Rajbir Randhawa, Advocate
for the petitioners.

Mr.S.S.Mor, Senior Deputy Advocate General,
Haryana.

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MAHESH GROVER, J. (O)

This revision is directed against the judgment of the Addl.Sessions Judge, Sirsa dated 12.7.1993 by which he convicted the petitioners for having committed an offence under Sections 323, 324, 325 and 326 read with Section 34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for 6 months and to pay a fine of Rs.100/- each under Section 323 of the Indian Penal Code. They were further sentenced to undergo rigorous imprisonment for a period of one year for the offence under sections 324, 325 and 326 and to pay a fine of Rs.200/-, 300/- and 400/- each for the commission of the offence under Sections 324, 325 and 326 of the Indian Penal Code, respectively and it was directed that the

substantive sentences shall run concurrently. The trial court had initially found the petitioners guilty under the aforesaid offences and convicted them to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.100/- each under Section 323/34 of the Indian Penal Code; in default of payment of fine to undergo further simple imprisonment for a period of seven days. They were also sentenced to undergo RI for one year and to pay a fine of Rs.200/- each under Section 324/34 of the Indian Penal Code; in default of payment of fine to undergo further simple imprisonment for a period of 15 days. They were further sentenced to undergo rigorous imprisonment for a period of 2 years and to pay a fine of Rs.300/- each under Section 325/34 of the Indian Penal Code; in default of payment of fine to undergo further simple imprisonment for a period of 21 days. Both the petitioners were further sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.400/- each under Section 326/34 of the Indian Penal Code and in default of payment of fine to undergo further simple imprisonment for a period of one month. All the sentences were ordered to run concurrently. In appeal the sentence of the petitioners was ultimately reduced by the appellate court, as indicated above.

The petitioners assaulted the complainant on 1.11.1986 at about 8.00 p.m. The genesis of the dispute was that the complainant had objected to the petitioners taking liquor just prior to the incident. As a result of which both the petitioners got together and caused injuries to the complainant, the detail of which is as below :

1. Incised wound measuring 10 x 2.5 cm. x bone

deep on right side fact. It starts from middle of right cheek up to parietal part of skull on right side. Margins were regular. Bone was cut. Clearly seen and felt on touching. Maxillary bone of right side face. Fresh blood was coming out from the wound.

2. Lacerated wound on chin in transverse position to the middle line measuring 4 cm. x 0.25 cm. x skin deep. Margins were irregular.
3. Lacerated wound measuring 2 cm. x .25 cm. It was just 1 cm. Below towards neck from injury No.2.
4. Incised wound measuring 1 cm. x .25 cm. x skin deep on left side of cheek. It was 5 cm. Anterior to the left side pinna. Margins were irregular.
5. Penetrating wound measuring 3 cm. x 2.5 cm. x muscle deep (2.5 cm. on probing) on left side of upper arm. Fresh blood was coming out of the wound. Margins were regular.
6. Abrasion on anterior of neck measuring 8 cm. On right side from the middle of neck.
7. Bruise measuring 3 cm. X 2 cm. On right side anterior auxiliary fold part was reddish in colour.
8. Contusion on left side forearm measuring 6 cm. x 5 cm. On ulna side of left forearm. Part was swollen and crackling sound was present on ulna

side."

The FIR was lodged on 2.11.1986 and after completion of the investigation challan was presented against the petitioners. The trial Court thereafter framed charges against them and after perusing the evidence led by the prosecution came to the conclusion that the petitioners were guilty of having committed the offence as arrayed against them and convicted them in the manner stated above. Ultimately the sentence was reduced by the appellate Court.

Aggrieved by the conviction and sentence awarded to them the present revision has been filed in which the counsel for the petitioners contended that the petitioners had been falsely implicated. He contended that there was a delay in lodging of the FIR as the incident had taken place on 1.11.1986 at 8.00 p.m. while the FIR was lodged at 10.00 a.m. on 2.11.2006. That apart, it was contended that even if all the allegations are taken to be correct, no case is made out against Banwari petitioner as the only eye witness Darshan Singh son of Harnek Singh has stated that when he came out of the shop he did not notice Banwari giving any injury to the injured and that Banwari was said to be armed with a lathi whereas all the grievous injuries as detailed in the medico legal report were caused with a gandasa which petitioner Gorkha was having. In view of this, learned counsel for the petitioners contended that at least Banwari petitioner had no role to play and deserves acquittal on this ground.

On the other hand, learned counsel for the State pointed out the serious injuries which had been inflicted upon the complainant, and contended that there was no evidence on record to

show that the plea of false implication as raised by the counsel for the petitioners was established. He accordingly prayed that the revision petition be dismissed.

I have heard the counsel for the parties and have perused the record.

Even though the petitioners have pleaded false implication, yet no evidence was adduced by them. The evidence on record suggests that the parties were known to each other, therefore, the question of wrong identification of the petitioners does not arise. The question of false implication is also manifestly absent in view of the fact that there is no evidence to show as to why the complainant would implicate them falsely. Besides, the complainant himself is an injured witness who has given the version to which there is no counter version which could bely the case of the prosecution.

Delay in lodging of the FIR is also of no consequence, as it has come in evidence that the complainant was taken to the hospital by Darshan Singh son of Harnek Singh who was the other eye witness accompanying him, and especially in the absence of any other evidence which could falsify the case of the prosecution. Mere allegation that there was a few hours delay in the lodging of FIR would not be fatal to the case of the prosecution.

Having regard to the facts in their totality, I find no infirmity in the findings recorded by the courts below. The revision petition is totally devoid of any merit.

At this stage, learned counsel for the petitioners made a prayer that since the occurrence is of the year 1986 and petitioner

Gorkha was aged 23 years and petitioner Banwari was aged 21 years at the time of occurrence and that they were first offenders and that they have never been involved in any other case, therefore, some leniency be shown to the petitioners.

I have considered this aspect of the matter carefully.

Having regard to the fact that the occurrence is of the year 1986 and the petitioners are facing the agony of the criminal proceedings for the last about 21 years, and also the fact that the petitioners Gorkha and Banwari were young men of 23 years and 21 years, respectively, and that by now they would be well advanced in age and well entrenched in life, I deem it appropriate to reduce the sentence of the petitioners to that of already undergone subject to the condition that they deposit a compensation of Rs.25,000/- each before the trial Court within a period of three months from today. In case the amount is not deposited within the stipulated period, the petitioners shall be required to undergo the sentences as determined by the appellate court vide its judgment dated 12.7.1993. The trial Court on receipt of the amount shall disburse the same to the complainant after due notice to him.

With the aforesaid observations, the revision petition stands disposed of.

25.7.2007 (MAHESH GROVER)
JUDGE

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